

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Gregory W. Dail & Sherry P. Dail

Case No. 08-81956

Chapter 13

Soc. Sec. No.: xxx-xx-9895 and xxx-xx-6076

Address: 1559 Surle Mount Tirzah Road, Timerlake,
NC 27583

Debtors

MOTION FOR AUTHORITY TO MODIFY CURRENT MORTGAGE

NOW COME the Debtors, by and through the undersigned attorney, pursuant to Sections 1303 and 363 of the Bankruptcy Code, requesting permission to modify current mortgage, and also requesting approval of an attorney fee, and in support thereof, shows unto the Court as follows:

1. Debtors have filed a petition for relief in bankruptcy under Chapter 13 of the United States Code on December 18, 2008.
2. The Debtors are the owners of certain real property (hereinafter referred to as "said property") located in Durham County in the State of NC and more commonly known as 1559 Surle Mount Tirzah.
3. The Debtors have already obtained a commitment for the modification, subject to approval by this Court.
4. The following table sets forth the approximate details of the modification:

Item	Amount
Amount being borrowed on new mortgage:	\$93,874.80
<u>Minus</u> Closing costs:	(856.32)
<u>Minus</u> Payoff on the current mortgage:	(93,874.80)
<u>Equals</u> Amount, if any, being pulled out of equity in subject real estate by the Debtors:	\$-856.32
Interest Rate on new mortgage:	6.74%
Term of new mortgage:	192 months

5. The current monthly mortgage payment is \$798.00.
6. The Debtors have already obtained a commitment for the modification. The projected monthly payment of the new mortgage is projected to be \$800.24 per month.
7. On the reasonable assumption that the expenses for real property taxes and/or homeowner's insurance will be about the same, whether or not the modification occurs, the new mortgage would increase the total monthly expense of the Debtors by approximately \$2.24 per month.
8. The Debtors wish to finalize the modification for the following reasons:
 - a. To get away from the current variable rate mortgage, and the inherent risk that the interest rate will, at some time in the future, increase to the point where the monthly mortgage payment is more than the Debtors can afford.
9. The Debtors can afford the said additional monthly expense of the new mortgage, based on the following:
10. By reason of the foregoing, the Both Male and Female that this new higher monthly mortgage expense will not operate a hardship upon them, nor will the higher expense hinder their ability to complete their Chapter 13 plan.
11. It is therefore in the best interest of the bankruptcy estate to allow the Debtors to modify current mortgage
12. The on-going mortgage will be paid through the Chapter 13 Trustee.
13. That \$350.00 is the reasonable value of the services provided and to be provided by the undersigned attorney for counseling the Debtors concerning the proposed mortgage modification, gathering information necessary to draft this application, drafting and processing this motion and the proposed order, interfacing with mortgage brokers and the closing attorney for the purpose of answering questions and concerns regarding the effect of the bankruptcy on the modification, extra follow-up to make sure that the ensuing order is obtained and transmitted to the closing attorney in a timely fashion to avoid delaying unnecessarily the projected closing of title. It is anticipated, based on many past experiences, that it will take at least 4 hours of attorney time to attend to said details.

WHEREFORE, the Debtors respectfully pray that the Court allow the said modification of the subject real property, approve and direct payment out of the proceeds of such modification a reasonable attorney fee or, in the event that the modification falls through or falls short, allow payment of the attorney fee through the Debtors' Chapter 13 plan, and grant such other and further relief as to this Court seems just and proper.

Dated: October 4, 2010

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz

Edward Boltz
N.C. State Bar No.:23003
1738-D Hillandale Rd.
Durham, N.C. 27705
(919) 286-1695

(refind.wpt rev. 11/5/09)

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CERTIFICATE OF SERVICE

I, Renee Nolte, of the Law Offices of John T. Orcutt, P.C., certify, under penalty of perjury, that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age, and that on October 4, 2010, I served copies of the **Motion for Authority to MODIFY CURRENT MORTGAGE** and , by regular U.S. mail, upon the following parties (names and addresses):

Richard M. Hutson, II
Chapter 13 Trustee
Post Office Box 3613
Durham, NC 27702

B B & T
Re-financier
Post Office Box 1847
Wilson, NC 27894-

Michael West
Bankruptcy Administrator
Post Office Box 1828
Greensboro, NC 27402

Gregory W. Dail & Sherry P. Dail
1559 Surle Mount Tirzah Road
Timerlake, North Carolina 27583

All creditors with duly filed claims as indicated on the Trustee's Report of Filed Claims.

/s Renee Nolte

Renee Nolte